

This letter is a follow up to letter (ST 02-0248-GIL) regarding sales tax and nexus issues. (This is a GIL.)

June 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated January 23, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Further to our letter of June 11, 2002 and your response dated November 6, 2002 (copies attached), we would like to request a letter ruling on the issue of nexus in the state of Illinois.

Attached please find information required in Section 1200.110(b) of the Illinois Department of Revenue Regulations.

Thank you for your attention. We look forward to your response.

Pursuant to Section 1200.110(b), please accept the following:

1. AAA is a company located in STATE. This is our only location. We do not have any employees, representatives or contractors in Illinois. We produce live Marketing and Sales events for our customers. Our customers are typically large corporations. We do not currently have any customers who are located in the state of Illinois, and therefore do not solicit orders in Illinois. All of our sales are conducted and purchase orders accepted in STATE. Our customer's events occur primary in hotels in various parts of the country, which are selected by our customers, not by us. These events require the temporary installation and operation of lighting, sound and staging equipment into a room of the venue hotel. Though we own some of this type of equipment, which is housed in our STATE facility, typically we do not ship the equipment from our facility, but rather rent it from a local vendor. Should we ship equipment from STATE, it is by common carrier and returned in the same fashion. These events typically last 1 to 3 days, on average, following which, those workers responsible for the

production of the event return to STATE. Our customers are billed for all aspects of the event, including the management, theme development, equipment, labor and media creation.

2. There are no contracts, licenses, agreements, instruments or other documents that are relevant to this request.
3. The tax period at issue is the period during which we might produce an event in Illinois, as described in #1 above. There is no audit or litigation pending with the Illinois Department of Revenue.
4. To the best of our knowledge, the Illinois Department of Revenue has never issued a letter ruling on this or any similar issue for AAA. There is no predecessor. AAA has never previously submitted this or a similar issue to the Department for a letter ruling that has been withdrawn prior to a ruling.
5. Addressing information supplied to us by the Illinois Department of Revenue on the subject of Nexus, please consider the following:
 - a.) 'An 'Illinois Retailer' is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory.' As indicated in #1 above all of our sales are conducted, and purchase orders accepted, in STATE. Also as previously stated, we do not maintain an inventory in Illinois. All of our property (we do not have an 'inventory') is maintained at our facility in STATE. Thus, we cannot be defined as an 'Illinois Retailer'.
 - b.) 'Another type of retailer is the retailer maintaining a place of business in Illinois.' This is defined in 86 Illinois Administrative Code, Ch. I, Sec. 150.201(i) as, 1. '...any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State;' Response: As previously indicated, we have only one location -- STATE. We do not have an agent or representative in Illinois either permanently or temporarily. 2. 'Soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this State;' Response: We engage in none of this type of activity. 3. 'Pursuant to a contract with a broadcaster or publisher located in this State, soliciting orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this State and only secondarily to bordering jurisdictions;' Response: We do not engage in this type of advertisement outside of STATE. 4. 'Soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities;' Response: We do not solicit orders by mail;

we do not benefit from any banking, financing, debt collection, telecommunication, or marketing activities in Illinois; we do not benefit from the location in Illinois of any installation, servicing or repair facility. 5. 'Being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this State;' Response: We do not own any other interests, and we are not owned by any other interests. 6. 'Having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section;' Response: This does not apply to us. 7. 'Pursuant to a contract with a cable television operator located in this state, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State;' Response: Again, we do not engage in this type of advertising in Illinois or any where else. 8. 'engaging in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state...For the purpose of determining such state of domicile, the Department will look to the place at which the selling activity takes place. The seller's acceptance of the purchase order or other contracting action in making the sale is the single most important factor in determining selling location.' Response: As indicated previously, all sales activity takes place in STATE -- all purchase orders accepted in STATE. 9. 'It does not matter that an agent may engage in business on his own account in other transactions, nor that such agent may act as agent for other persons in other transactions, nor that he is not an employee but is an independent contractor acting as agent. The term 'agent' in broader than the term 'employee'.' Agent' includes anyone acting under the principal's authority in an agency capacity.' Response: Again, we do not have any agent, in any way, representing our company in Illinois.

- c.) 'The United States Supreme Court in Quill Corp. v. North Dakota...set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. ' As our customer is not located in Illinois, and the sale is not conducted in Illinois, neither we, nor our customer would be availing ourselves of the economic market in Illinois, even if the event occurs there. The location of the event is incidental to the transaction. Therefore, due process is not satisfied.
- d.) 'The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of this product on a repetitive basis will trigger Use Tax collection responsibilities.' Since this first requires the satisfaction of due process, and since in our circumstances, due process has not been satisfied, this negates that

second prong of the test. However, given that, as previously indicated we do not have any physical presence as defined in this test. Please note: should we produce an event in Illinois, it would be, at the most, once a year.

- e.) 'The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer is (sic) this situation does not incur Retailer's Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and the customer must remit the amount directly to the State.' Following the above examination, this best describes our circumstance, but for one aspect. As previously stated, we currently have no customers in Illinois, therefore there would be no Use Tax liability on the part of the customer either.
 - f.) 'In general, the imposition of the various local sales taxes in Illinois takes effect when 'selling' occurs in a jurisdiction imposing the tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred...The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax.' Since the seller's acceptance of the purchase order is considered by the Department as the 'most important element of selling', and the imposition of sales taxes takes effect when 'selling' occurs, then the conclusion is that there can be no sales tax liability in our case.
- 6. To the best of our knowledge and belief, there are no authorities contrary to our views.
 - 7. There are is no trade secret information contained in our request for a letter ruling which must be deleted from publicly disseminated version of the letter ruling.

We have reviewed your follow up letter. You have described where you are located and where you accept purchase orders. The Department does not make nexus determinations through its letter rulings.

As you may recall, the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The rate is 6.25% of gross receipts for most items, and a lower rate of 1% for qualifying food, drugs and medical appliances. The Service Occupation Tax Act, 35 ILCS 115/1 et seq., imposes a tax upon all persons engaged in the business of making sales of service on all tangible personal property transferred as an incident of a sale of service. Please note that a Use Tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 35 ILCS 105/1 et seq. If you are bringing equipment into Illinois for use, (either your own equipment or that of a lessor) Use Tax will be due. If the equipment is yours, you will owe the Use Tax. If the equipment is leased from a lessor, the lessor will owe Use Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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